July 18, 2007

The Honorable Sean R. Parnell
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: Review of 07COGA Initiative Application
A.G. file no: 663-07-0191

Dear Lieutenant Governor Parnell:

I. INTRODUCTION

You have asked us to review an application for an initiative entitled "An Act establishing a program of public funding for campaigns for state elected offices, to be known as the Alaska Clean Elections Act, and amending the oil and gas production tax to levy and collect a surcharge on oil as a source of funding for the program." ("07COGA"). We have completed our review. The primary legal concerns raised by the initiative are whether it violates the prohibition against dedicated revenues and whether it violates the single-subject rule. We conclude that the application does not comply with the constitutional and statutory provisions governing the use of the initiative because it violates the single-subject rule. That is, the initiative addresses two subjects that have no fair relation to each other: (1) it creates a voluntary system of public campaign financing, and (2) it imposes a tax on oil production. *See* AS 15.45.040(1) ("the bill shall be confined to one subject"). Under these circumstances we recommend that you do not certify the application.

II. SUMMARY OF THE PROPOSED BILL

The purpose of the bill appears to be twofold: (1) to establish the Alaska Clean Elections Act; and (2) to create a funding source for the Alaska Clean Elections program by levying a surcharge on the production of oil. We summarize each component of the bill in turn.[1]

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[1] We note that the bill is similar, but not identical, to SB 182 and HB 261, introduced at the end of the last regular session.

A. PROPOSED ALASKA CLEAN ELECTIONS ACT

The majority of the bill is devoted to the Alaska Clean Elections Act, which is set forth in section 7.[2] The purpose of the Alaska Clean Elections Act is to create a voluntary system in which participating candidates for public office receive significant financial support for their campaign from the state if they agree to submit to the clean elections program and thereby forego certain types of campaign contributions. The apparent hope of the sponsors is to reduce the influence of certain "large contributors" in the political process and "eliminate the danger of corruption caused by the private financing of election campaigns." Section 2.[3] Participating candidates are relieved of the burdens of fundraising and where such participating candidates face nonparticipating candidates in an election contest, the Act attempts to match dollar for dollar the campaign contributions of the nonparticipating candidate. Similar bills have been enacted in other states.[4]

Proposed AS 15.14.010 establishes a "clean elections fund" to finance the election campaigns of participating candidates. Subsection (b) identifies various potential sources of money for the fund including the proceeds of the $.03/barrel surcharge on oil production levied by the bill. Perhaps notably, subsection (e) provides that money remaining in the clean elections fund after an elections cycle may be appropriated to the permanent fund dividend fund and used to pay Alaska Permanent Fund dividends. Thus,

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[2] Section 1 sets out the short title of the Act, section 2 sets out findings of the people of Alaska related to the need for a voluntary "clean elections" system, sections 3-6 and 8 make various conforming changes. Section 4 also authorizes the Alaska Public Offices Commission to appoint a clean elections administrator. Section 14 provides that the bill will apply immediately to election cycles for state legislators, and will apply after December 31, 2010, to election cycles for governor and lieutenant governor.

[3] Other purposes are to slow the escalating cost of elections, to diminish the public perception of corruption, increase the accountability of elected officials, and to encourage more competitive elections. Section 2.

[4] *See, e.g.,* Me. Rev. Stat. 21-A § 1121, *et seq.* (Maine), Ariz. Rev. Stat. § 16-901, *et seq.* (Arizona), and Vt. Stat. 17 ch. 59 (Vermont). For a survey of clean elections laws and associated litigation regarding such laws, see Jason B. Frasco, Note, *Full Public Funding: An Effective And Legally Viable Model For Campaign Finance Reform In The States,* 92 Cornell L. Rev. 733 (2007).

the bill seems to suggest a mechanism for funding that could personally benefit each voter in Alaska, though the amount of the benefit is probably quite small.[5]

Proposed AS 15.14.020 sets out the campaign finance limitations to which participating candidates agree. Candidates may only accept and expend from the following types of contributions: (1) seed money contributions; (2) clean elections funds; (3) certain limited political party contributions; and (4) certain limited private contributions. Subsequent proposed sections describe and govern each type of contribution.[6]

Proposed AS 15.14.030 provides that a candidate for public office may participate in the "clean elections" public financing program by filing a declaration of intent.

Proposed AS 15.14.035 sets out the time requirements for filing a declaration of intent: candidates for governor or lieutenant governor may qualify as participating candidates between August 1 of the year before a general election and June 1 of the year of a general election. Candidates for state legislator may qualify between October 1 of the year before a general election and June 1 of the year of a general election.

Proposed AS 15.14.040 allows some fundraising before a candidate qualifies for public funding. A candidate is permitted to collect and expend seed money contributions up until the point of certification as a participating candidate. Seed money contributions are capped at $100/individual, and may not to exceed a total of $20,000 for gubernatorial

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[5] For instance, assuming that oil production remains constant at 700,000 barrels/day, the total surcharge collected for two years would be approximately $15.3 million. Further assuming that none of this money was expended on clean elections and that it all was appropriated into the dividend fund, the amount that PFDs would be increased (assuming 630,000 applicants) would be only $24. So the potential benefit in terms of increased PFDs is likely quite small. Nevertheless, this funding mechanism is unusual. It does not seem beyond the realm of possibility that this provision could be used as a sort of "pot-sweetener" to aid in the collection of signatures, *i.e.*, " . . . and, if there's any money left over, it gets paid to you in your PFD." The use of this provision in this manner as an inducement to collect signatures may raise legal issues.

[6] As described below, proposed AS 15.14.050 requires candidates to also accept "qualifying contributions," but those are tendered to the clean elections administrator for deposit in the clean elections fund.

candidates, $10,000 for lieutenant governor candidates, $2,000 for state senate candidates, and $1,000 for state representative candidates.

Proposed AS 15.14.050 provides that candidates seeking to qualify as a participating candidate must collect certain numbers of $5 qualifying contributions together with a voter statement from each contributor. Gubernatorial candidates must collect 3,000 qualifying contributions from individual registered voters; lieutenant governor candidates must collect 1,500 qualifying contributions; state senate candidates must collect 400 qualifying contributions; and state representative candidates must collect 200 qualifying contributions.

Proposed AS 15.14.060 describes the certification process for becoming a participating candidate. The candidate must file during the qualifying period, agree to abide by the requirements of the clean elections program, and submit a campaign finance report and the requisite number of qualifying contributions.

Proposed AS 15.14.070 sets limits on expenditures for the various state offices. During the primary, a participating candidate for governor may spend no more than $275,000; a participating candidate for lieutenant governor may spend no more than $165,000; a participating candidate for state senate may spend no more than $26,400; and a participating candidate for state representative may spend no more than $17,600. During the general election, a participating candidate for governor and lieutenant governor may jointly spend no more than $550,000; a participating candidate for state senate may spend no more than $39,600; and a participating candidate for state representative may spend no more than $26,400.

Proposed AS 15.14.080 provides that certified participating candidates are eligible to receive up to approximately 90 percent of their funding cap under AS 15.14.070 from the clean elections fund. This section also provides that candidates nominated by political parties may receive general election funding only if their party receives at least 10 percent of the votes cast in the primary election for that office.

Proposed AS 15.14.090 governs the timing of distributions from the clean election fund to participating candidates. For the primary, participating candidates get 25 percent of the allowable amount under AS 15.14.080 after certification, and the remaining amount at the end of the qualifying period if the participating candidate has an opponent. For the general election, after the primary results are certified, participating candidates without opponents get 25 percent of the allowable amount under AS 15.14.080, and participating candidates with opponents get 100 percent of the allowable amount under AS 15.14.080. The section provides for various deductions to these distributions. The

section also provides that the clean elections administrator shall distribute "matching funds" (described in proposed AS 15.14.100) to participating candidates when a nonparticipating opponent exceeds the spending limits established in the bill.

Proposed AS 15.14.095 requires a candidate who is not participating in public funding but who spends in excess of a certain percentage of the spending limits imposed on participating candidates to file periodic spending limit reports with the Alaska Public Office Commission. Such reports are in addition to the expenditure reports required of candidates required under AS 15.13.040 and AS 15.13.110, and shall disclose the total of all expenses incurred through the day before date of the report.

Proposed AS 15.14.097 authorizes the clean elections administrator to determine whether a nonparticipating candidate has incurred excess expenses. Such a determination will trigger the provision of matching funds under proposed AS 15.14.100 to the opponent of the nonparticipating candidate, if such opponent is a participating candidate.

Proposed AS 15.14.100 sets out a method for the provision of additional funds to a participating candidate when a nonparticipating opponent's spending reaches an amount determined to be excessive, i.e., "excess expenses." The total of clean elections funds, including matching funds, distributed to a participating candidate may not exceed three times the limits imposed by AS 15.14.100. If, however, the participating candidate has more than one nonparticipating opponent, the matching funds may not exceed the excess expenses of the nonparticipating opponent having the highest excess expenses.

Proposed AS 15.14.110 requires that persons or groups incurring independent expenditures "involving" a participating candidate must file a report with the Alaska Public Offices Commission. This provision provides a procedure for a certified participating candidate to file a complaint regarding such independent expenditures with the clean elections administrator and authorizes certain remedies, including the characterization of the independent expense as an expense of a nonparticipating opponent. This is potentially significant, because the expense would count toward whether the opponent has incurred excess expenses for purposes of obtaining matching funds.

Proposed AS 15.14.120 requires that clean elections funds only be used for the purposes set out in AS 15.13.112 (existing law governing uses of campaign contributions).

Proposed AS 15.14.130 describes and governs allowable contributions by political parties to participating candidates. Such contributions are capped at 10 percent of the amounts set out in AS 15.14.080, described above.

Proposed AS 15.14.140 requires repayment of unused clean elections funds.

Proposed AS 15.14.150 provides that candidates seeking placement on the general ballot by petition may become certified participating candidates. In lieu of the allowable political party contribution described in AS 15.14.130, petition candidates may solicit and accept private contributions up to ten percent of the amounts set out in AS 15.14.080, described above.

Proposed AS 15.14.160 addresses various scenarios of the joined campaigns of governor and lieutenant governor in the general election, *i.e.*, how to deal with situations when one candidate in the joined campaign is a participating candidate and the other is not.

Proposed AS 15.14.170 provides that write-in candidates may not be participating candidates.

Proposed AS 15.14.180 describes the process for a participating candidate to withdraw from the clean elections program.

Proposed AS 15.14.190 authorizes pro rata distribution of clean elections funds in the event of insufficient funding. It also authorizes participating candidates to accept private contributions in the event there is insufficient funding. Participating candidates would still be subject to the expenditure limitations of the bill.

Proposed AS 15.14.200 sets forth civil penalties for violation of the clean elections program by participating candidates, including disqualification as a candidate or forfeiture of the office if the candidate exceeds the spending limits in the bill by more than 10 percent.

Proposed AS 15.14.210 provides an administrative appeal process for decisions of the clean elections administrator. Appeals are made to the Alaska Public Offices Commission.

Proposed AS 15.14.220 provides that the dollar values set out in the sections governing seed money contributions (AS 15.14.040), spending limits (AS 15.14.070),

and distribution of clean elections funds to participating candidates (AS 15.14.080) shall be adjusted for inflation beginning in January 2011 and every four years thereafter.

Proposed AS 15.14.230 authorizes the administrator to adopt regulations to implement the Alaska Clean Elections program.

Proposed AS 15.14.240 requires the Alaska Public Offices Commission to submit a report to the legislature on the Alaska Clean Elections program by January 30, 2010, and every four years thereafter.

Proposed AS 15.14.400 sets out the definitions of the Clean Elections Act.

B. PROPOSED FUNDING SOURCE

The funding source sections are found in sections 9-13 of the bill. In Section 12,[7] proposed AS 43.55.400 establishes a new surcharge of $.03/barrel on oil produced in the state. Proposed AS 43.55.410 provides that the legislature "may" appropriate from the proceeds of the oil surcharge to the clean elections fund. The discretionary nature of the appropriation is of course mandated by law, but the language of proposed AS 43.55.410 appears to be at variance with the title of the bill which states that the surcharge is "a source of funding" for the clean elections program.

III. ANALYSIS

Under AS 15.45.070, the lieutenant governor is required to review an application for a proposed initiative and either "certify it or notify the initiative committee of the grounds for denial" within 60 days of receipt. The grounds for denial of an application are that "(1) the proposed bill . . . is not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors." AS 15.45.080. We discuss these in the order presented in the statute.

A. FORM OF THE PROPOSED BILL

The form of a proposed initiative bill is prescribed by AS 15.45.040, which requires that (1) the bill be confined to one subject; (2) the subject be expressed in the title; (3) the enacting clause state, "Be it enacted by the People of the State of Alaska"; and (4) the bill not include prohibited subjects. The prohibited subjects are dedication of

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[7] Sections 9-11 and 13 are conforming changes.

revenue, appropriations, the creation of courts, the definition of court jurisdiction or rules of court, and local or special legislation. AS 15.45.010; Alaska Const. art. XI, § 7.

We have concerns with two of these requirements: whether the bill seeks to dedicate revenues, and whether the bill is confined to one subject. Under the Alaska Supreme Court's deferential standard of review, we conclude that the initiative does not violate the constitutional prohibition against dedication of revenues, but conclude that it does violate the single-subject rule. We conclude with a summary.

1. The Standard for Review of Initiatives is Deferential

The Alaska Supreme Court is very protective of the people's right to enact law through the initiative process. The Court attempts to "construe voter initiatives broadly so as to preserve them whenever possible." *Anchorage Citizens for Taxi Reform v. Municipality of Anchorage,* 151 P.3d 418, 422 (Alaska 2006).

2. An Initiative May Not Dedicate Revenues

The Alaska Constitution prohibits the use of initiatives to dedicate revenues. Alaska Const. art. XI, § 7. The title of 07COGA suggests the sponsors seek to dedicate a stream of revenues, a tax on oil, in order to fund the campaign finance program that is the subject of the initiative (*i.e.,* "to levy and collect a surcharge on oil as a source of funding for that program"). Accordingly, we must consider whether 07COGA violates the prohibition against dedication of revenues by initiative. We conclude that while the title suggests a dedication of revenues, the title is inaccurate. The bill itself does not dedicate revenues.

In *Fairbanks v. Convention & Visitors Bureau,* 818 P.2d 1153 (Alaska 1991), the Alaska Supreme Court considered whether an initiative dedicated revenues in violation of the constitution. The proposed initiative amended a local bed tax ordinance to provide that the proceeds were for the purpose of funding city facilities, services for the public and on the promotion of tourism and economic development, but any organization, public or private, could seek funds from the discretionary fund. *Id.* at 1154 n.3. The existing ordinance allocated the proceeds to various purposes, unless the city council voted otherwise. *Id.* at 1154. The Court held that the "two main motivations behind the ban on dedicated revenues were to maintain the flexibility in budgeting and to ensure that the legislature did not abdicate responsibility for the budget." *Id.* at 1158. The Court held that because the initiative removed the existing restraints in the ordinance and did not infringe the city council's budgeting flexibility, it did not violate the constitutional prohibition against dedicating revenues by initiative. *Id.* at 1158-59; *see also*

Sonneman v. Hickel, 836 P.2d 936, 938 (Alaska 1992) (purpose of prohibition against dedicated funds is to "preserve control of and responsibility for state spending in the legislature and the governor").

Recently, we considered whether the first initiative related to cruise ships, 03CRUZ, violated the constitutional prohibition against dedicating revenues by initiative. There, the initiative proposed a tax, the proceeds of which would be deposited in a segregated subaccount in the general fund. The initiative proposed that the proceeds "may" be appropriated by the legislature for certain purposes. We relied on the Court's decisions in *City of Fairbanks* and *Sonneman* and opined that since the initiative preserved the legislature's flexibility by only providing that the legislature "may" appropriate for certain purposes, the initiative did not violate the prohibition against dedicated revenues. *See* 2003 Inf. Op. Att'y Gen. 4-5 (Aug. 15; 663-03-0179).

Proposed AS 43.55.410 in 07COGA provides that the "legislature may appropriate" the proceeds of the $.03/barrel surcharge on oil production to the clean elections fund. If this were all the bill did, then our analysis would be at an end and we could conclude that 07COGA does not violate the prohibition against dedicated revenues. However, the title of the bill purports to provide a "source of funding for that [Clean Elections] program." (emphasis added). We must therefore consider what legal significance, if any, the title has to our analysis.

Under AS 15.45.040(2), "the subject of the bill shall be expressed in the title." A leading treatise on statutory construction states that statutes alleged to be defectively titled are "presumptively constitutional." 1A Singer, Sutherland Statutory Construction § 18.5 (6th ed. 2002). All that is required is that the title gives reasonable notice of the contents of the bill. *Id.* Thus, the standard of review is quite deferential.

When we consider the 07COGA title issue under the deferential standard of review of bill titles in conjunction with the deferential standard of review of initiatives, we conclude that the title passes muster. While it seems apparent from the title that the sponsors desire to earmark a funding source for their program, that desire is a legal impossibility.[8] The sponsors appear to know that and carefully drafted the bill text to

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[8] We recognize that without a dedicated funding source for this program, the sponsors' initiative may not be funded even if enacted by the people, particularly since sitting legislators may be reluctant to appropriate a funding source for their opponents in the next election cycle. But this result was specifically intended by the framers. *See* 1975 Op. Att'y Gen. No. 9 at 11 ("In response to the typical argument that '. . . unless you have a fair share of earmarked funds for special certain purposes, particularly public

comply with the prohibition against dedicated revenues. We must construe the bill title so that it is constitutional and consistent with the bill contents. The only way to do so is to ignore the following words in the title: "as a source of funding for that program." Accordingly, the title does not create a dedication of revenues.

In sum, we conclude that the 07COGA initiative does not violate the constitutional prohibition against dedication of revenues by initiative (or the requirement that the subject of the bill be expressed in the title). We next turn to the issue of whether the initiative complies with the single-subject rule.

3. An Initiative Must be Confined to One Subject

The Alaska Constitution requires that bills be confined to one subject. Alaska Const. art. II, § 13 ("Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws."). Similarly, AS 15.45.040(1) requires that initiatives be confined to one subject. *See Yute Air Alaska, Inc. v. McAlpine,* 698 P.2d 1173, 1179 n. 2 (Alaska 1985) (single-subject rule applies to initiatives); *see also* 1959 Inf. Op. Att'y Gen. No. 36 (same); 2003 Inf. Op. Att'y Gen. 2 (Aug. 15; 663-03-0179) (same). The Lieutenant Governor shall deny certification of an initiative if it is not confined to one subject. AS 15.45.080(1). Because 07COGA pertains to a publicly financed system of campaign reform as well as a tax on oil production, we must consider whether it violates the single-subject rule. We conclude that it does.

The Alaska Supreme Court has adopted a very deferential standard for determining whether a bill complies with the single-subject rule:

> To determine if a bill is confined to one subject, all that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other,

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works . . . you often times do not get them', the answer was: 'They have to sell their viewpoint [to the legislature] along with everybody else.'") (*quoting* Proceeds of the Alaska Constitutional Convention at 2365, 2367). It is possible that the only way for a publicly-financed campaign finance program to be truly effective in Alaska is if a dedicated funding source is established in the Alaska Constitution. We note that the Alaska Constitution may not be amended by initiative—it may only be amended as provided in art. XIII. *See Alaskans for Efficient Gov't v. State,* 153 P.3d 296 (Alaska 2007).

> either logically or in popular understanding , as to be parts of, or germane to, one general subject.

Evans v. State, 56 P.3d 1046, 1069 (Alaska 2002) (*quoting Johnson v. Harrison,* 50 N.W. 923, 924 (Minn. 1891) (comprehensive acts such as a probate code do not violate single-subject rule)); *see also Short v. State,* 600 P.2d 20, 24 (Alaska 1979) (various provisions of a bill must "fairly relate to the same subject, or have a natural connection therewith"). The Court has observed that the purpose of the rule is to prevent "log-rolling"—including unrelated subjects in one bill in order to secure their passage. *Evans,* 56 P.3d at 1069.[9] The Court will broadly construe what constitutes a single subject and will only strike down legislation if the violation is "substantial and plain." *Id.*

Under the Court's generous standard the following bills have been sustained:

- a bill providing for earthquake relief as well as criminal sanctions for false statements made in application for such relief (*Suber v. Alaska State Bond Comm'n,* 414 P.2d 546, 557 (Alaska 1966));

- a bill providing for the issuance of general obligation bonds for flood control and small boat harbor projects (*Gellert v. State,* 522 P.2d 1120, 1123 (Alaska 1974));

- a bill relating to both state and municipal property taxes on oil and gas property (*North Slope Borough v. Sohio Petroleum Corp.,* 585 P.2d 534, 545-46 (Alaska 1978));

- a bill authorizing the issuance of capital improvement bonds for correctional facilities and public safety facilities (*Short v. State,* 600 P.2d 20, 23-25 (Alaska 1979));

- a bill relating to the Uniform Land Sales Practices Act and the Alaska Land Act (*State v. First Nat'l Bank of Anchorage,* 660 P.2d 406, 415 (Alaska 1982));

- an initiative repealing statutes regulating intrastate air and motor carriers as well as seeking the repeal of federal law regulating

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[9] The desire to prevent log-rolling was expressed by the constitutional framers as well. *See* Proceedings of the Alaska Constitutional Convention at 1746-47.

interstate sea carriers (*Yute Air Alaska, Inc. v. McAlpine,* 698 P.2d 1173, 1175, 1180 (Alaska 1985));

- a bill related to a variety of tort reform provisions (*Evans v. State,* 56 P.3d 1046, 1069 (Alaska 2002));

While the Court has consistently upheld bills against single-subject challenges, it has expressed misgivings along the way. In *State v. First Nat'l Bank of Anchorage,* the Court determined that the bill sections relating to the Uniform Land Sales Practices Act and the Alaska Land Act fell under the single subject of "land." But it was not entirely satisfied with this result:

> Were we writing on a clean slate, we would be inclined to find this subject impermissibly broad. Permitting such breadth under the one-subject rule could conceivably be misconstrued as a sanction for legislation embracing "the whole body of the law. . . . Nevertheless, while the issue is indeed close, we are unable to say that the legislature has transgressed the limits of article II, section 13 established by prior decisions of this court.

First Nat'l Bank of Anchorage, 660 P.2d at 415 (citation omitted). In *Yute Air,* the dissatisfaction with the overly broad standard split the court with Justice Moore characterizing the Court's broad standard as a "farce" and calling for a meaningful standard, and Justice Burke concluding the majority was "dead wrong." *Yute Air,* 698 P.2d at 1182-89. The waters seemed to have smoothed in the Court's most recent decision, *Evans*, where the Court made no reference to the debate and appears to have endorsed the broad standard. *Evans,* 56 P.3d at 1069-70.

We also have had occasion to consider the single-subject rule. In 2003, we concluded that the first initiative related to cruise ships, 03CRUZ, violated the single-subject rule. While we found that the initiative covered the subjects of "taxes, discharge permits, gaming, unfair trade practices and other issues," with three exceptions, the bill was united by the "consistent theme of regulation of commercial passenger vessels." 2003 Inf. Op. Att'y Gen. 3 (Aug. 15; 663-03-0179). The three exceptions involved provisions of the bill that went beyond the regulation of cruise ships, including gambling activities off cruise ships, taxes on foreign flagged ships and aircraft, and penalties for violations of environmental laws for activities unrelated to cruise ships. *Id.* at 3-4. With respect to the tax provision, we took note of the fact that the tax would "impact the

calculation of taxes . . . outside of the passenger cruise ship industry." *Id.* at 3. For these reasons, we concluded that 03CRUZ violated the single-subject rule.[10]

With this background we turn to consideration of the 07COGA initiative. In so doing we must remain mindful that in general the Alaska Supreme Court will construe initiatives in a manner so as to preserve them where possible. Moreover, violations of the single-subject rule must be "substantial and plain" in order for the Court to find a single-subject violation.

The single subject of the 07COGA initiative is campaign finance reform. With one exception, all of the sections of the initiative fairly relate to that subject. The exception is proposed AS 43.55.400 which levies a $.03/barrel surcharge on oil. There is nothing in this section that relates to campaign finance reform. The sponsors, however, attempt to create a connection through the use of proposed AS 43.55.410, in which the legislature "may" appropriate the surcharge proceeds to the clean elections fund. The question is whether this connection is sufficient to satisfy the single-subject rule.

As noted above, despite the sponsors' apparent intention to secure a source of funding for the clean elections program, they cannot—under the prohibition against dedication of revenues, securing a source of funding from state tax revenues for this or any program is a legal impossibility. Accordingly, we must sever any perceived link between the surcharge and the Clean Elections program. In so doing, however, we are left with an initiative that appears to treat two subjects: campaign finance reform and a new tax on oil.

We also consider, as we did with respect to the 03CRUZ initiative, whether the tax has an impact outside of the subject of the bill. Obviously it does. The tax is imposed on the oil industry and once collected could be used for any public purpose.[11] In this regard,

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[10] Subsequently, the sponsors of 03CRUZ removed the offending provisions and resubmitted the initiative. We concluded that the revised initiative, 03CTAX, did not violate the single-subject rule. *See* 2003 Inf. Op. Att'y Gen. (Oct. 6; 663-03-0179). The initiative was then placed on the ballot and approved by the voters.

[11] We note the apparent irony in the fact that the tax the initiative seeks to use to support the clean elections program is levied upon the oil industry, which likely falls in the category of "large contributors" whose influence the initiative seeks to reduce. In Arizona the clean elections law was initially to be funded in part by a tax on lobbyists. But an Arizona Superior Court struck down the lobbyist tax as an "unconstitutional prior

we recall that last year, issues related to the production tax on oil and gas consumed a large portion of the regular session and two special sessions. A production tax on oil is clearly a discrete subject that has no fair relation to campaign finance reform.

In sum, we conclude that despite the Court's very deferential standards, the violation of the single-subject rule is plain and substantial. To be in proper form, an initiative must be confined to one subject. AS 15.45.040(1). You are authorized by AS 15.45.080(1) to deny certification to an initiative not in proper form. Because 07COGA is not confined to one subject, it is not in proper form. We therefore recommend that you deny certification.

4. Summary

In summary, with respect to the form of the bill, we conclude that it does not dedicate revenues, but it does violate the single-subject rule. The single-subject violation occurs because 07COGA creates a publicly financed system of campaign finance and it imposes a surcharge on oil production. Because the bill violates the single-subject rule, the bill is not in proper form.[12] Therefore, we recommend that the application be rejected.

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restraint on the exercise of free speech." *Lavis v. Bayless,* CV 2001-006078 (Sup.Ct. Ariz. Dec. 21, 2001).

[12] We also note that the subject of the initiative raises an issue under the First Amendment. Laws regulating campaign finance can encroach on election speech protected under the First Amendment if the measure directly or indirectly stifles or limits participation in the election process. The U.S. Supreme Court has vigilantly protected First Amendment principles in the campaign finance context. *See, e.g., Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, No. 06-969, 2007 WL 1804336 (U.S. June 25, 2007) (addressing political advertising by public interest groups); *Buckley v. Valeo*, 424 U.S. 1, 44-50 (1976) (certain contribution and expenditure limitations violate the First Amendment). First Amendment challenges have been mounted in states adopting so-called "clean elections" public financing laws, but with the exception mentioned above at n. 11, to date those challenges have been rejected. *See Daggett v. Comm'n on Governmental Ethics and Election Practices,* 205 F.3d 445 (1st Cir. 2000); *Association of American Physicians and Surgeons v. Brewer,* 363 F. Supp. 2d 1197 (D. Ariz. 2005). While we note these constitutional issues—we may review a proposed initiative to ensure that it is in the proper form and does not violate the restrictions on the use of the initiative set forth in the constitution and statute. Unless plainly unconstitutional, consideration of other legal and constitutional issues must be deferred until after the voters have enacted

B. THE FORM OF THE APPLICATION

Certification of an initiative may also be denied if "the application is not substantially in the required form." AS 15.45.080(2). The required form of an initiative application is prescribed in AS 15.45.030, which provides:

> The application must include the
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> (1) proposed bill;
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> (2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and
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> (3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

AS 15.45.030. The application meets the first and third requirements as well as the latter portion of the second requirement regarding the statement on the signature page. With respect to the first clause of the second requirement, the Division of Elections within your office determines whether the application contains the signatures and addresses of not less than 100 qualified voters.

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the bill. *See Alaskans for Efficient Government, Inc. v. State,* 153 P.3d 296, 298 (Alaska 2007) (constitutional issues not identified as prohibited subjects may only be considered after initiative becomes law); *Kodiak Island Borough v. Mahoney,* 71 P.3d 896, 900 (Alaska 2003) (clearly unconstitutional initiatives may be rejected at the application stage).

C. NUMBER OF QUALIFIED SPONSORS

Certification of an initiative may also be denied if "there is an insufficient number of qualified sponsors." AS 15.45.080(3). The Division of Elections within your office will determine whether there are a sufficient number of qualified sponsors.

IV. CONCLUSION

For the above reasons, we find that the proposed bill is not in the proper form, and therefore recommend that you do not certify this initiative application.

If you decide to reject the initiative, we suggest that you give notice to all interested persons and groups who may be aggrieved by your decision. AS 15.45.240. This notice will trigger the 30-day appeal period during which these persons must contest your action or be forever barred from doing so. *McAlpine,* 762 P.2d at 86.

Please contact me if we can be of further assistance to you on this matter.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By:
Michael Barnhill
Senior Assistant Attorney General

MAB/ajh

cc: Whitney Brewster, Director of Division of Elections